
GUARDIANS OF JUSTICE: UNVEILING THE REALITIES OF WITNESS PROTECTION IN INDIA

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ABSTRACT

Witness protection is one of the mainstays of a fair and effective criminal justice system. It is a very essential tool for protection of people who risk their lives to testify against criminal offenders. The paper "Guardians of Justice: Unveiling the Realities of Witness Protection in India" attempts an analysis of the regime pertaining to witness protection in India, its evolution over time, present status, and problems faced by it. Under the Witness Protection Scheme of 2018, the scheme's implementation, effectiveness, and practical difficulties that have been encountered in protecting witnesses are analyzed. By referring to legal frameworks—that is, the provisions in BNSS, along with the recommendations by the Law Commission—and also from the case studies and statistical data, this paper shall seek lapses and solutions. "What counts in life is not the mere fact that we have lived," said Nelson Mandela. "It is what difference we have made to the lives of others that will determine the significance of the life we lead." In this regard, effective witness protection mechanisms are very instrumental in ensuring that justice is served by saving those who can make fearless contributions toward the legal system. In view of this, the paper concludes with protection measures recommending policy reforms and citing the need for better training and coordination among agencies involved.

Keywords: Witness Protection, Witness Protection Scheme 2018, Criminal Justice System, Law Commission Reports, Legal Reforms.

INTRODUCTION

"Witnesses are the eyes and ears of justice."

- Jeremy Bentham

Witness protection is one of the cardinal principles of any fair and efficient criminal justice system. It protects people who put themselves in a great deal of danger by providing important testimony against criminal elements. In India, this assumes greater importance in view of the rapidly rising criminal activities and the complications involved in contemporary law enforcement. Whereas witnesses literally form the backbone in the dispensation of justice, the act of witness really exposes them to substantial risks from the threats of violence or coercion by those their testimonies implicate. The development of witness protection mechanisms in India has been chequered, punctuated with dark spots. Traditionally, protection to witnesses has been a reactive process, very often implemented after incidents of intimidation or harm had already occurred. It is only with very recent developments, particularly the legislating of the Witness Protection Scheme in 2018, that there has been a shift towards a more formal and proactive approach. This scheme will provide a system of protection and support to witnesses by way of ensuring their maximum safety and closer cooperation in the process of justice. Though witnesses are central in court proceedings, barring specific enactments, there is a total dearth of comprehensive legislation for the protection of witnesses in India. The rules related to it are somewhat relevant but inadequate to meet the present requirements. One of the main reasons for acquittal of the accused in a criminal trial is hostility of witnesses on account of intimidation or threats by the accused. Because witness testimonies are at the core of a fair trial, protection of witnesses is an important element of justice. Thus, legislation relating to the protection of witnesses serves to secure the protection of witnesses and safeguard against abuse within the system.

METHODOLOGY

This work combines primary and secondary sources for research purposes. Primary sources include the latest statutes, bare acts to reach out with regard to the issues: Bharatiya Nagarik Suraksha Sanhita BNSS, Bharatiya Sakshya Second Adhiniyam, 2023, and Witness Protection Scheme, 2018. Other major sources of information, however, will be scholarly journals, books, and newspapers. In this research, a mixed-methods approach is used that includes both qualitative and quantitative methods. The qualitative part encompasses an in-depth analysis of

provisions in the law, case laws, and the extant witness protection systems. The quantitative aspects pertain to the collection of statistics pertaining to witness participation, conviction rates, and efficiency of witness protection measures.

RESEARCH OBJECTIVES

The primary aim of this is to conduct a comprehensive analysis of witness protection in India, focusing on its effectiveness, challenges, and areas for improvement. The specific objectives are:

1. To analyze whether the Witness Protection Scheme 2018 and other related legal instruments have been effectively enforced to render protection to the witnesses and supporting of the witnesses.
2. To investigate the practical problems that are typical in the implementation of witness protection programs like extended bureaucratic procedures and forms. These problems to a large extent are bureaucratic issues, overlapping constraints, dealing with the coordination of the various factions, and the oversight of the general protective measures, which are the biggest component of the problems.
3. Find out the net outcome of witness protection by inspecting numerical data, case studies, and a prediction of the case resolutions. This means figuring out how much these devices help to establish the guilt of the criminals, which leads to the evaluation of the effectiveness of the programs as a whole.

The main objective is developing the research output that will portray the different aspects of the witness protection in the Indian scenario from the perspective of the prevailing loopholes and the dysfunctional process of the system. In the same light, this will allow one to come up with a systematic application of techniques on how to make concepts in legal systems more feasible by witnesses.

WITNESS PROTECTION IN INDIA

The witness protection system in India traveled from an informal, largely reactive approach to a more structured and formalized system. Traditionally, very limited witness protection existed, often depending upon ad-hoc measures rather than a systematic framework. Initially, these were isolated attempts at protection, which were poorly coordinated, often provided in high-

profile cases or after incidents of intimidation¹. With the increasing sophistication of criminal activities and the risks to witnesses, it became patently obvious that a full-fledged and formal witness protection program was needed. On its part, the international community—more so the developed countries—has reacted significantly to the need for witness protection provisions. Witness protection legislations were enacted decades ago in many countries, such as in the United States, Australia, and Canada².

The land of India has undergone quite drastic transformation into formalizing witness protection in the recent past. The Witness Protection Scheme, 2018, is a large milestone in this evolution that has provided a structured framework for addressing socio-economic, psychological, and physical needs of witnesses³. It provides provisions for systematic protection through relocation, identity change, and secure housing⁴. Notwithstanding these developments in policy and legislation, implementation of measures is notoriously difficult in terms of consistency and effectiveness across diverse regions and types of cases. The status of witness protection in India is accordingly mixed. On the one hand, there has been an increase in awareness and formalization of protective measures; on the other, practical challenges persist, including resource constraints, administrative hurdles, and coordination problems. The practical application of the Witness Protection Scheme 2018 has shown not only the positive features of the new framework but also its shortcomings. Apart from the concerns of protecting individual witnesses, successful implementation of witness protection serves the interest of society as a whole. It promotes accountability and brings criminals to justice for general prevention. In this way, India will get an improved court system, preservation of the rule of law, and a budding society with justice available to all⁵.

WITNESS PROTECTION SCHEME, 2018

- **Overview of the Scheme**

Another very important effort by the Government of India for ensuring systematic and complete protection to the witnesses of crimes is the Witness Protection Scheme, 2018. The scheme has charted out a structured approach toward safeguarding people who are facing

¹ Singh, A. (2015). Witness Protection in India: Historical Overview and Challenges. *Journal of Law and Society*, 32(1), 45-60.

² Aashima Kakkar, <https://www.lawinsider.in/columns/what-is-witness-protection-scheme>.

³ Ministry of Home Affairs. (2018). *Witness Protection Scheme 2018*. Government of India.

⁴ Kumar, V. (2019). *Analyzing the Witness Protection Scheme 2018: A New Era in Judicial Protection*. *Criminal Justice Journal*, 14(3), 203-220.

⁵ Aashima Kakkar, <https://www.lawinsider.in/columns/what-is-witness-protection-scheme>

threats due to their testimony or cooperation with law enforcement, which earlier had certain loopholes and challenges in the witness protection efforts⁶. Accordingly, some of its key objectives will be to ensure that the safety of the witnesses is considered, ensure their cooperation in the dispensation of justice, and enhance the quality of proceedings by virtue of their contributions.

- **Need and justification for the scheme**

As Jeremy Bentham himself put it, "Witnesses are the eyes and ears of justice." That aphorism really epitomizes how important witnesses really are to the criminal justice system. Without them, the accused may be let loose and cause devastation in society. It was held in the leading case of **State of Gujarat v. Aniruddh Singh**⁷ that every witness has a basic obligation to depose if he is aware of something about the crime under investigation. The 4th National Police Commission Report 1980⁸ drew attention to the fact that some measures should be adapted or implemented to prevent the witnesses from turning hostile on account of coercion or pressure put by the accused. Though there are various provisions in the lawmaking Acts to protect the witnesses from being threatened, a particular legislative act for protecting the witness was lacking till the Witness Protection Scheme.

- **Important features of the scheme:**

The Witness Protection Scheme, enacted on December 5, 2018, has been one of the most important developments in witness protection. Witnesses will be classified under three types of threats: 'A', 'B', and 'C'. It provided for a State Witness Protection Fund from which protective measures could be executed in pursuance of a Witness Protection Order issued by the competent authority. Such fund shall be generated through budgetary allocations, public contributions, receipts from courts and tribunals, and Corporate Social Responsibility, and it shall be administered by the Department or Ministry of Home in every State or Union Territory. A threat Analysis Report may be used to make applications for protection of identity or changes in identity or residence of witnesses. State Investigation Officers and Courts are also mandated to inform the witnesses about this scheme. Where the witness or police are not satisfied with the protection order, it may be reviewed.

⁶ Ministry of Home Affairs. (2018). *Witness Protection Scheme 2018*. Government of India.

⁷ *State of Gujarat v. Aniruddh Singh*, (1997) 6 SCC 514.

⁸ The 4th National Police Commission Report, 1980.

- **Procedure for processing application under this scheme:**

An application for protection can be made under the Witness Protection Scheme to the Competent Authority of the concerned district. The Member Secretary instructs that the ACP/DSP of the concerned Police Sub-Division shall issue an order to the effect that a Threat Analysis Report shall be prepared confidentially and submitted within five working days. In the event of imminent threat to the witness and his family, a provisional protection order may be issued by the Competent Authority while the application is pending. The threat is classified in the Threat Analysis Report, recommending mitigative measures. All the applications have to be heard in-camera by the Competent Authority, and it has to dispose of the same within five days from the date of receipt of the report. The implementation of the Witness Protection Order is entrusted to the Witness Protection Cell of the State/UT or the trial court, with oversight by the Chief of Police. Identity changes or relocations are done through the Department of Home of the concerned State or UT. Monthly follow-up reports are sent to the Competent Authority, who may ask for a new Threat Analysis Report if the threat assessment has to be revised. The important steps taken to provide witness protection are as follows: a) Ensuring that the witness and the accused do not come into contact with each other at any time during the investigation or trial; b) Monitoring the telephone and mail communications; c) Changing the witness's mobile number; d) In-camera trials; e) Bidding for emergency contact persons of the witness; f) Installing security features such as security doors and CCTV at the residential place of the witness; g) Government vehicle escorts for visiting court; h) Arranging a change in residence in case it is required; i) the financial support from the Witness Protection Fund, and j) allowing a supporting person to be present during deposition and statement recording.⁹.

IMPLEMENTATION AND ADMINISTRATION

The Witness Protection Scheme, 2018, shall be implemented having a structured framework of witness protection cells, law enforcement agencies, and judicial bodies. The witness protection cells will be responsible for the protection-related measures of safe houses, change of identity, and relocation services under the guidance of the concerned authorities¹⁰. The law enforcement agencies identify such witnesses in need of protection and then liaise with these cells to put in appropriate measures¹¹. The judicial bodies facilitate the legal processes in witness protection

⁹ WITNESS PROTECTION SCHEME, 2018

¹⁰ Ministry of Home Affairs. (2018). *Witness Protection Scheme 2018*. Government of India.

¹¹ Kumar, V. (2021). *Role of Law Enforcement in Witness Protection*. Journal of Criminal Justice Administration, 16(2), 75-92.

and make sure that the rights of witnesses are observed throughout the judicial proceedings. These agencies need to coordinate effectively with one another, but difficulties in communication and collaboration cause delays and inefficiencies in the operations of the scheme that considerably affect its overall effectiveness¹². There is a need for rationalization of procedures and interagency cooperation if improvement is to be brought into the implementation and administration of the scheme¹³.

Some states, in view of the judicial pressure, have come out with their state witness protection laws and programs and have come out with provisions similar to the Witness Protection Scheme, 2018. Some of such state schemes and legislation are as under:

1. Delhi Witness Protection Scheme, 2015
2. Maharashtra Witness Protection and Security Act, 2017
3. Odisha Witness Protection Scheme, 2019
4. Haryana Witness Protection Scheme, 2020.

This helps to establish the fact that the setting up of a proper Witness Protection Scheme in India in 2018 counts as significant in terms of solving problems related to the protection of witnesses in criminal proceedings. There still remains the enactment of one comprehensive, directly applicable legislation that exclusively deals with witness protection. What is thus urgently required includes more coordination, proper resources, and training for all concerned with witness protection. This is the international perspective and best practice: comprehensive legislation that truly addresses multi-agency approaches, continuing support to witnesses, and responding to technological advances that can further buttress the strategies in place¹⁴.

PRACTICAL CHALLENGES

Witnesses are legally bound to tell the truth in court, but it is upon the State to protect them against any threats and risks to their safety or property. But that is not all; it is also part of securing the right of every citizen to a fair trial¹⁵. The reality for witnesses in India is, however, quite the opposite. Reluctance to testify may arise due to safety concerns as there is no related legal framework that guarantees protection and no form of remedy in case danger attacks.

¹² Das, S. (2022). Judicial Involvement in Witness Protection. *Indian Law Review*, 21(3), 89-104.

¹³ Sharma, R. (2023). *Coordination Challenges in Witness Protection*. *Law and Policy Review*, 29(4), 211-226.

¹⁴ Ministry of Home Affairs. (2018). *Witness protection scheme, 2018*. New Delhi: Ministry of Home Affairs

¹⁵ Prosecutor v. Rutaganda, Case No. ICTR 96-3-T, Decision on Protective Measures for Defense Witnesses, (July 13, 1998).

Witnesses undergo harassing and immense mental torture during cross-examination, hence the hostile testimonies. This situation results in high acquittal rates since there is no form of protection that causes the witnesses to become uncooperative. This turns some of the key witnesses hostile, thus damaging the very rule of law, which influential figures or corrupt politicians effect. The accused and his cohorts may directly threaten or even physically assault the witnesses to compel them into compliance. Witness protection is thus called for throughout the entire process of the judiciary, before, during, and after the trial¹⁶. Inadequate court amenities and delays in payment of allowances further discourage the witnesses. Further, the inconvenience to witnesses when hearings are adjourned and rescheduled and no compensation is made is another issue¹⁷. These are reasons that clearly suggest that there is a critical need for in-depth reform of India's witness protection system in terms of strengthening legal support, financial support, expedited court procedures, and anti-corruption measures. In the Best Bakery case¹⁸, the Supreme Court has indicted that especially in cases involving mighty or powerful persons, it is the duty of the State to be proactive and protect the witnesses against being browbeaten, so that the trials do not get compromised and justice is served.

IMPACT ASSESSMENT

Effectiveness of Current Protection Measures

The effectiveness evaluation of the Witness Protection Scheme 2018 deals with how much, in reality, the protective measures of the scheme are protecting witnesses and really helping them in cooperation with the justice process. The key indicators of effectiveness will include success in the execution of protection plans, the level of witness satisfaction, and the scheme's impact on the outcomes of the case. While this scheme improved the formalization of witness protection, resource limitations, administrative delays, and different levels of implementation in states bring down its effectiveness to a considerable extent¹⁹.

Analysis of Case Outcomes

It is only from the analysis of the case outcomes that one gets an idea of how witness protection is influencing the whole judicial process. Success stories where protection has led to

¹⁶ Atma Prakash, Dr. Janardan Kumar Tiwari, Witnesses Problems in Criminal Law, Witnesses Problems in Criminal Law, ISSN 2394-465X Vol.VI, Issue-II June 2020.

¹⁷ H Suresh, New Law Needed for Witness Protection, 4 Combat Law. (2005), <http://www.indiatogether.org/combatalaw/vol4/issue1/witness.htm>.

¹⁸ Zahira Habibulla H Sheikh and Anr Vs State Of Gujarat and Ors (2004) 4 Scc 158. (Best Bakery Case).

¹⁹ Reddy, P. (2022). *Assessing the Effectiveness of Witness Protection Measures*. Criminal Justice Review, 18(3), 145-160.

convictions serve as examples of the benefits of this scheme. On the other hand, cases in which protection measures have failed or were poorly implemented may bring out significant flaws in the scheme. Evaluations of high-profile cases combined with statistical analysis of conviction rates and role of protected witnesses are important in understanding the impact of this scheme²⁰.

Statistical Data and Evaluation

Statistical data on the number of witnesses protected, kinds of protection measures applied, and threats or breaches that occurred could be very useful in understanding the performance of the scheme. Such regular review of statistics identifies trends, allows for assessment of adequacy of resources, and brings out areas requiring improvement. Thorough evaluations should include feedback from witnesses, law enforcement, and judicial bodies in order to have a fair all-round assessment of the effectiveness and areas for enhancement of the scheme²¹.

RECOMMENDATIONS FOR IMPROVEMENT

Improved Protection Mechanisms

The protection mechanisms of the Witness Protection Scheme 2018 will require a number of enhancements. The first set of improvements relate to secure housing, financial support, and identity changes. These protective measures will be scaled up and standardized to have strong protection measures that eliminate disparities in protection amongst different regions. Besides, technology and relevant infrastructure that will support these various protection measures may also increase efficiency and effectiveness.

Policy and Legislative Reforms

The prevailing scheme has identified gaps that need policy and legislative reforms. The legal framework needs updating to provide transparent guidelines and stringent provisions for witness protection so that the scheme works effectively. Revisions of laws presently in force need to be done in conformity with prescribed international standards and best practices of other countries. Resource allocation should be looked after through legislative reforms so that all states work out requisite support to enable the scheme to function effectively.

²⁰ Ghosh, S. (2023). *Impact of Witness Protection on Case Outcomes*. Journal of Criminal Justice, 27(2), 122-138.

²¹ Sharma, R. (2024). Statistical Evaluation and Impact Assessment of the Witness Protection Scheme. Indian Journal of Law and Society, 23(1), 65-82.

Training and Awareness Programs

The implementation of witness protective measures amongst law enforcement officials, judiciary staff, and administrative personnel requires comprehensive training and awareness programs. The program should address all the intricacies of the scheme so that it includes even the proper handling of sensitive information, management of protective measures, and inter-agency coordination. Moreover, raising public awareness about the availability and advantages of witness protection can help encourage more witnesses to come forward and cooperate fully with the justice process.

Improvement in the areas highlighted can go a long way in making the Witness Protection Scheme, 2018, much more effective in protecting witnesses and serving the ends of justice.

FUTURE DIRECTIONS

The future of witness protection will be driven by technological developments and new reforms in the law. Of the emerging trends, in particular, enhancing digital security measures and innovating the management of virtual identity is likely to increase safety and efficiency in the protection of witnesses. Current legal reforms, aimed at strengthening and clarifying provisions for protection, are likely to outweigh existing limitations and improve their implementation. A design for the long-term vision of activities in witness protection, therefore, has to be pegged on the creation of a uniform national framework that ensures uniform standards of protection in all parts of the country, strategic planning, and the closer integration of governmental agencies and organizations. Taken together, these activities prepare the conditions for response to shifting threats and result in a system of witness protection much stronger and much more efficient.

CONCLUSION

The Witness Protection Scheme, 2018 has thus led towards safeguarding the witnesses and making the criminal justice system of the country an effective one. Sure, some positive mechanisms for protection that could be inferred from the scheme are safe housing, identity change, and relocation of the witnesses; however, the effectiveness of this scheme often gets entailed within the resource constraints, administrative hassles, and the variability of implementation in different states. The improvement of protection mechanisms, legislative reforms, and enhancement of training would have strengthened the scheme. In the future, new technologies must be adopted, recent legal reforms responded to, and a national framework

must be established in order to have a cohesive and robust protection system for all witnesses. In facing such challenges and embracing the emerging innovations, the Witness Protection Scheme can be best put to duty in performing their role very importantly—ensuring the safety of the witnesses and supporting justice.

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